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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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AirTouch Paging's Petition ) RM-9273  
for Rulemaking to Establish )  
a Dedicated 8XX Code for )  
Toll-Free Calls Placed from )  
Pay Telephones )

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

COMMENTS OF RADIOFONE, INC.

Radiofone, Inc. (Radiofone), by its attorneys and pursuant to Sections 1.405 of the Commission's Rules, respectfully submits these comments in support of the captioned Petition for Rulemaking filed by AirTouch Paging (AirTouch).

AirTouch requests the Commission to initiate a rulemaking to create an additional option for payphone service providers to obtain compensation for toll-free calls. AirTouch proposes that a specific numbering plan area (NPA) code in the form of "8XX" be reserved for toll-free service where the caller (using a payphone) pays the local coin rate for the call, and the "8XX" service provider does not pay compensation to the payphone service provider. Radiofone supports the adoption of a specific NPA code, or even specific NXX codes, that would be billed as proposed by AirTouch. To the extent that the Commission would determine that Section 228 of the Communications Act of 1934, as amended, prohibits the requirement of a coin deposit for the use of a "toll-free" number, Radiofone suggests that the Commission establish a distinct class of NPA codes that consumers would understand are "coin-deposit-toll-free." In the alternative, the

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Commission could forbear from Section 228 to the extent necessary to implement AirTouch's proposal. Paging carriers have been unduly burdened by the flat-rate payphone compensation mechanism. AirTouch's proposal would help alleviate that impact.

### **Interest of Radiofone**

Unlike other paging carriers, Radiofone provides individual 800 numbers for its paging customers only on a very limited basis. It more typically provides toll-free numbers for use by all of its customers. Callers dial one of these 800 numbers and enter the number of the specific customer to be paged.

If Radiofone would accept calls from payphones, the 800 service provider would pass on an additional 30 cents per call to Radiofone. A typical toll-free call to one of Radiofone's paging customers costs less than ten cents. The additional 30 cents for a payphone call quadruples the cost for that call. Yet, when Radiofone receives its bill, it has no way of knowing which customer was associated with each particular call. Thus, it cannot bill individual customers for incoming calls from payphones; it would need to spread its costs across all of its customers. In order to keep down the costs to its customers, Radiofone, like many other paging carriers, has asked its toll-free service provider to block all calls from payphones. Radiofone would prefer to accept calls from payphones if the rates for those calls would be predictable and related to the short length of the calls received.

Not only has the current payphone compensation mechanism resulted in Radiofone blocking calls from payphones, but Radiofone also has postponed the introduction of new services to its paging customers. Radiofone had planned to provide its customers with a toll-free number that they could use to find out if they had received pages while outside of Radiofone's service area. Because Radiofone cannot predict how many of these calls would originate from payphones and how high its bills from its toll-free service provider would be, Radiofone has postponed offering the service until all payphones are blocked later this year.

Radiofone therefore supports AirTouch's proposal to let the payphone user compensate the payphone service provider, and let the toll-free subscriber pay only for the toll charges.

#### **Section 228 of the Act Does Not Preclude Adoption of AirTouch's Proposal**

The Commission previously denied an earlier AirTouch proposal that callers (not carriers) should compensate payphone service providers.<sup>1</sup> AirTouch's current proposal differs from its earlier proposal in that AirTouch is suggesting an alternative to how toll-free calls from payphones otherwise are compensated. Thus, the Commission's reasons for its denial of AirTouch's

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<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Order on Reconsideration), 11 FCC Rcd. 21,233 paras. 77, 88-89 (1996).

earlier proposal should not preclude its adoption of AirTouch's current proposal.

When the Commission denied AirTouch's earlier proposal, the Commission stated that Section 228 of the Act prohibits any charges for toll-free calls.<sup>2</sup> Specifically, Section 228(c)(7)(A) provides that:

A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in . . . the calling party being assessed, by virtue of completing the call, a charge for the call.

In order to implement AirTouch's current proposal, the Commission could either: (a) establish a set of numbers that are not "understood to be toll free" (and would not be advertised as toll free); or (b) forbear from this section of the Act to the extent necessary to implement AirTouch's proposal.

To establish a set of numbers that are not "understood to be toll free," the Commission could assign an unused NPA code and call it something other than a "toll-free" number, such as a "coin-paid-toll-free" number. The industry already has assigned the "880", "881", and "882" NPA codes as the "paid" versions of the "800", "888" and "877" toll-free codes, and has assigned dozens of geographic area codes that begin with "8".<sup>3</sup> As a result, consumers should not automatically think that an NPA code

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<sup>2</sup> Id. para. 89.

<sup>3</sup> See the NANP site on the Internet: [http://www.nanpa.com/number\\_resource\\_info/npastat.html](http://www.nanpa.com/number_resource_info/npastat.html).

beginning with "8" is "free." There are 16 general purpose NPA codes beginning with "8" that have not been assigned.<sup>4</sup> The Commission could assign any of these 16 NPA codes and call it a "coin-sent-toll-free" code to satisfy AirTouch's proposal, while complying with Section 228 of the Act.

Alternatively, if the Commission were concerned about consumer confusion of "8XX" codes with toll-free numbers, it could assign some other NPA code to satisfy AirTouch's proposal. The industry has set aside "Easily Recognizable Codes" for which the last two digits are the same (e.g., "766"); these are reserved for future assignment where the ease of remembering the number is important.<sup>5</sup> Thus, an NPA code such as 222, 333, 444, 666, or 777 (or some other Easily Recognizable Code) could be assigned, and would be one that people would readily remember. The industry also has set aside codes of the form "37X" and "96X" for use where it is important to have a full range of 10 NPA codes available.<sup>6</sup> If the need for coin-paid-toll-free numbers is large, it would be prudent to use an NPA code from the "37X" or "96X" set so that an additional and similar NPA code could be assigned later when the first code is exhausted.

If the Commission were to determine that such coin-paid-toll-free numbers nevertheless were "toll-free" numbers under the

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<sup>4</sup> See id.

<sup>5</sup> See NPA Allocation Plan and Assignment Guidelines, at 16-17, May 18, 1998 (available on <http://www.atis.org>).

<sup>6</sup> See id. at 6.

Act (and Radiofone does not think that they are), the Commission could forbear from Section 228 to the extent necessary to implement AirTouch's proposal. Forbearance is justified under the three factors to be considered in granting forbearance: (a) whether enforcement of the provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (b) whether enforcement of the provision is not necessary for the protection of consumers; and (c) whether forbearance is consistent with the public interest.<sup>7</sup> First, the charges for the call to the paging provider from a payphone would not be any more unreasonable or discriminatory than the current local coin rate or the payphone compensation rate as passed through to the long distance customer. Second, as long as consumers are educated about the use of the new numbers, enforcement of Section 228(c)(7) is not necessary to protect consumers. Finally, by forbearing from Section 228(c)(7), the Commission would promote further use of payphone and long distance services, would ensure that payphone service providers receive adequate compensation and would promote the introduction of new services by paging carriers. Thus, forbearance would be in the public interest.

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<sup>7</sup> 47 U.S.C. § 160.

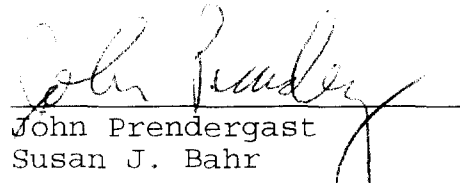
### Conclusion

For the foregoing reasons, Radiofone supports the adoption of a specific NPA code, or even specific NXX codes, as proposed by AirTouch. To the extent that the Commission would determine that Section 228 of the Act prohibits the requirement of a coin deposit for the use of a "toll-free" number, Radiofone suggests that the Commission establish coin-deposit-toll-free codes, or in the alternative, the Commission could forbear from Section 228 to the extent necessary to implement AirTouch's proposal. Radiofone respectfully requests the Commission to move expeditiously to adopt a notice of proposed rulemaking on this issue.

Respectfully submitted,

**RADIOFONE, INC.**

By

  
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June 5, 1998

**CERTIFICATE OF SERVICE**

I, Susan J. Bahr, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens, and that on this 5th day of June, 1998, I sent via first-class U.S. mail, postage prepaid, copies of the foregoing to:

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